



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/167971

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's prior authorization request for Pediatric Community Care (PCC) services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kelly Townsend

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. The Petitioner is 16 years old and lives at home with family.

2. In 2012, the Petitioner was involved in an accident in which he sustained a traumatic brain injury. Petitioner's diagnoses include: acute respiratory failure, seizure disorder, spastic hemiplegia, G-tube dependency. Functional limitations include bowel/bladder, contractures, endurance, ambulation and speech. Petitioner is dependent on caregivers for all of his needs.
3. On April 27, 2015, the Petitioner's provider, [REDACTED] ([REDACTED]), submitted a PA request for PCC services with a start date of May 1, 2015. The request includes a physician's order to provide skilled nursing care up to 12 hours/day, 7 days/week, hours to be used flexibly, not to exceed 672 hours in an eight week period, all providers combined. Orders also include the following
  - Assessment: nursing to perform full nursing assessment every shift and Prn including but not limited to T, P, R. Blood pressure on admission and at night. Weekly weight. Oxygen saturation daily and PRN. Adequate hydration, safety, bowel and bladder pattern.
  - Assess cardiac
  - GU: urine check
  - GI: assess hydration, skin turgor, stool pattern, bowel sounds. Perform GT cares daily and PRN. Administer feeds as ordered.
  - Pain: assess daily and PRN
  - Skin: assess skin and reposition at a minimum of every two hours.
  - Respiratory: complete assessment. Requires suctioning to maintain patency. Perform oral, NP and OP suctioning as necessary.
  - Neuro: assess for seizure activity throughout the day. Administer Diastat PRN.
  - Rehab: work with therapists.
4. Petitioner attends [REDACTED] full time. He receives physical therapy, occupational therapy and music therapy.
5. Petitioner has a baclofen pump that is managed through Children's Hospital.
6. On June 5, 2014, the medical records submitted by the Petitioner indicate he had a seizure. On August 12, 2014, Petitioner's mother reported to the physician that Petitioner had a seizure the previous week and that he gets them 2 – 3 x/week.
7. On December 19, 2014, the Petitioner's physician noted that Petitioner is tolerating a pureed diet and is enjoying eating. On February 13, 2015, the physician noted that Petitioner is on a general diet as tolerated.
8. On April 27, 2015, the Petitioner's physician reported that the Petitioner is only taking meds via g-tube and otherwise eats all by oral intake. He also noted the Petitioner wears diapers and sometimes tells his PCW when he needs to void. Petitioner was noted to have increased muscle tone, limited passive and active range of motion. It was also reported that the Petitioner has reduced frequency and severity of spasms as a result of a baclofen pump. The physician noted that Petitioner's respiratory system, eye, endocrine system, genitourinary system, hematologic/lymphatic system, behavioral/psych system and skin are all within normal limits. He was noted to have difficulty with speech, is followed by cardiology for healed contusion from car accident, has constipation, is in a wheelchair but can bear weight and walk with assistance, has seizures and motor/speech delays.
9. Petitioner's physician reported on July 14, 2015 that the Petitioner is on tube feeding 3x/day and continuous feeding at night.

10. Petitioner receives 46.25 hours/week of personal care worker (PCW) services. The Petitioner's plan of care includes orders for the PCW to assess for changes in condition. The PCW is also to assist with tube feeding and bowel program.
11. Pharmacy records submitted by the Petitioner's provider indicate that Diastat (for seizures) has not been refilled for over one year.
12. On June 29, 2015, the agency issued a notice to the Petitioner that it had denied his PA request.
13. On August 12, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

### **DISCUSSION**

PCC services are medical services provided in a day care setting for children with complex medical needs who reside at home and require at least eight hours per day of skilled nursing care, as defined in the Wisconsin Administrative Code, §DHS 107.12. §DHS 107.12(1)(a) provides: "Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting during those hours when normal life activities take him or her outside of that setting."

The issue is whether the Petitioner requires 8 or more hours of skilled nursing services. Petitioner's mother argues that a nurse is necessary at all times while Petitioner is at school. Specifically, she testified that he requires g-tube feeding at school, assistance with a Foley catheter, suctioning and monitoring/treatment for seizures. She also noted that the Petitioner was recently hospitalized for a bowel obstruction.

It is the burden of the Petitioner and his provider to submit sufficient evidence to establish the need for the requested service. In this case, the medical records submitted with the request do not support the Petitioner's assertion that he requires 8 hours/day of skilled nursing services. The medical records indicate that the primary purpose of the nurse is to assess and monitor petitioner's condition and respond if necessary. The Department has long taken the position that monitoring is not the equivalent of providing skilled services. See, e.g., §DHS 107.12(1)(f), "Medically necessary actual time spent in direct care that requires the skills of a licensed nurse is a covered service."

The Department requested additional medical documentation regarding the need for suctioning as well as any seizure logs or neurostorming logs to verify the frequency of need for these skilled interventions. No documentation was provided in response to the request to demonstrate the frequency of need for skilled nursing to treat seizures or perform suctioning.

The Petitioner's mother did submit documentation from the Petitioner's physician indicating that the Petitioner requires g-tube feedings 3x/day. However, the time of the feedings is not clear from the documentation. I note that the orders for the Petitioner's PCW include orders to assist with feedings.

Based upon the records before me I must conclude that the denial of PCC was correct. The medical documentation submitted with the PA does not support the assertion that the Petitioner requires 8 hours/day of skilled nursing care. I note that the Petitioner's mother testified at the hearing that his condition has changed recently. If so, the Petitioner's provider can submit a new PA request based on current condition.

### **CONCLUSIONS OF LAW**

The evidence submitted with the PA request does not support the request for PCC for the Petitioner. The Department properly denied the request.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

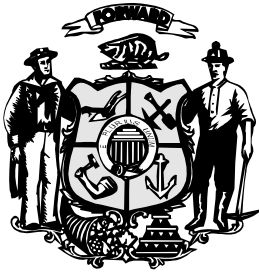
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of December, 2015

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 1, 2015.

Division of Health Care Access and Accountability